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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re A.G. et al., Persons Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

J.H.,

Defendant and Appellant.

D075499

(Super. Ct. No. EJ4194A-B)

APPEAL from a judgment and order of the Superior Court of San Diego County,  
Gary M. Bubis, Judge. Affirmed.

Paul A. Swiller, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Thomas E. Montgomery, County Counsel, Caitlin E. Rae, Chief Deputy County  
Counsel, and Kristen M. Ojeil, Deputy County Counsel, for Plaintiff and Respondent.

J.H. appeals the juvenile court's findings that A.G. and R.G. are minors described by Welfare and Institutions Code section 300, subdivision (b)(1)<sup>1</sup> and the court's dispositional order removing the minors from her care. J.H. argues the court's findings were not supported by sufficient evidence and were instead improperly based on circumstantial evidence, conjecture, and inferences. While this is a close case, under the applicable standard of review, we reject J.H.'s arguments and affirm the juvenile court's jurisdictional and dispositional findings.

#### FACTUAL AND PROCEDURAL BACKGROUND

J.H.'s involvement with the San Diego County Health and Human Services Agency (Agency) began in September 2017, when she was severely beaten by A.G.'s father, T.G., precipitating A.G.'s preterm birth. The day of the assault, J.H., who is a member of the military, drove herself to the Naval Medical Center with T.G. When she arrived at the gate, J.H. signaled to military personnel she was in distress. J.H. was admitted to the hospital and T.G. was detained at the gate and arrested for assault with a deadly weapon.

As a result of the assault, the Agency filed a petition on behalf of A.G. under section 300, subdivision (b)(1). A.G. was placed in a foster home upon discharge from the hospital and the juvenile court took jurisdiction over the minor. Thereafter, a criminal protective order was issued that prevented T.G. from having any contact with J.H. for a three-year period. After the juvenile court took jurisdiction over A.G., J.H. and T.G.

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<sup>1</sup> Subsequent statutory references are to the Welfare and Institutions Code.

committed themselves to reunification services and regularly visited A.G. Both J.H. and T.G. completed domestic violence training, were appropriate and caring during their visits with A.G., and expressed their strong commitment to reunify with their child. J.H. also accessed additional services through the military and worked to develop a support system among friends and coworkers.

Because of J.H.'s and T.G.'s efforts, at the six-month review hearing, the Agency recommended termination of the dependency proceeding and that A.G. be returned to her parents' separate care on an established schedule. An important aspect of the Agency's recommendation was its belief that J.H. and T.G. had ended their destructive relationship. The juvenile court agreed with the Agency's recommendation and terminated jurisdiction in July 2018. The court also placed A.G. in her parents' care under an agreed custody arrangement.

Prior to the end of A.G.'s dependency, J.H. became pregnant with R.G. When J.H. disclosed the pregnancy to the Agency in April 2018, she denied T.G. was the father of the child. T.G. also denied that he was R.G.'s father. J.H. told the Agency's social workers she had a one-night stand that resulted in the pregnancy and that the father was not interested in being part of the child's life. J.H. explicitly denied that she had any contact with T.G. during the dependency proceeding, which would have violated the criminal protective order restraining T.G. from contacting her.

J.H. gave birth to R.G. in August 2018, the month after A.G.'s initial dependency proceeding was closed. The Agency had no involvement with the family through the fall of 2018, but in December received a referral from one of J.H.'s coworkers that she had

come to work with a black eye and a large bruise on her arm. When the Agency's social workers visited J.H. on December 18, 2018, she denied ever having a black eye, explaining she was sleep deprived from caring for an infant and probably had dark circles. J.H. said the bruise was the result of co-sleeping with R.G. with his head rested on her arm. J.H. continued to deny that T.G. was R.G.'s father, but did admit that he had moved back into her apartment in September 2018. She told the social workers she and T.G. were "a happy couple and everything is great."<sup>2</sup>

The Agency's social worker also interviewed J.H.'s next door neighbors, Delan and Sierra H., on December 18, 2019. The couple reported they often heard yelling coming from J.H.'s apartment and had considered calling the police in the past. The social worker encouraged them to call the police if they had any concerns for the family.

On December 19, 2018, the Agency interviewed J.H.'s counselor through the military's family services program, Elizabeth Reichek, who stated that J.H. told her T.G. had been arrested at J.H.'s apartment the night before for violating the criminal protective order after a neighbor called the police. Reichek also reported that J.H. told Reichek that she and T.G. were together and that "everything is perfect in their relationship." Reichek suspected that T.G. was R.G.'s father and that the couple had been untruthful throughout the prior proceedings about their relationship. Reichek also discovered that J.H. had been

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<sup>2</sup> Despite J.H.'s representations before the end of A.G.'s initial dependency that the relationship had ended, the record contains some indications suggesting otherwise. After T.G. was arrested, J.H. minimized the assault and expressed desire to both reunify with A.G. and reconcile with T.G. In addition, as she participated in reunification services, J.H. frequently told providers that she hoped to eventually reconcile with T.G.

to the hospital in April, while she was pregnant, and told medical personnel that she had fallen down the stairs. Reichek stated that the hospital visit occurred the day after police had been called to the house. Reichek suspected physical violence between J.H. and T.G. and feared the minors were at risk, specifically telling the Agency's social worker that she was "worried that the father would kill the mother" and "that there is an obvious pattern of domestic violence . . ."

The social worker interviewed Delan and Sierra again on December 19, 2018. They reported that at around 11:00 p.m., the night before, they heard J.H. and T.G. arguing, slapping sounds, J.H. threatening to call 911, and T.G. calling J.H. a bitch. Delan also said he heard fighting between the couple a few times a week in the two months that he had lived in the apartment complex. J.H.'s next door neighbor, Veronica T., was also interviewed on December 19, 2018. Veronica told the social worker she had lived in the apartment since August 2017, and denied hearing loud arguments or yelling regularly from J.H.'s home, though she had seen T.G. regularly throughout 2018. Veronica also stated she had heard a weird yell from the apartment a few days before.

The Agency's social worker interviewed Audrey D., another neighbor and close friend of J.H., also on December 19, 2018. Audrey stated she did not have any concerns about domestic violence between J.H. and T.G. and reported she regularly saw the children and they were always happy and healthy. Audrey agreed to be part of a safety plan for the family and to be present when T.G. and J.H. exchanged the minors.

The police report from the evening of December 18, 2018, noted that Delan called the police after hearing J.H. and T.G. arguing and yelling for approximately 40 minutes.

When the police arrived at the apartment, J.H. and T.G. denied they were arguing or that physical violence occurred. The couple explained that they had an emotional conversation as a result of J.H.'s visit with the Agency's social worker that day, which J.H. believed was precipitated by her coworkers' report of the bruise on her arm. The Agency's investigation also uncovered two additional reports of alleged domestic violence at J.H.'s apartment on February 10, 2018 and April 17, 2018 (coinciding with J.H.'s visit to the hospital). Police were called to the apartment on both days, but no one answered the door either time.

Social worker Brittany Najar called J.H. on December 19, 2018, to ask about the events the night before. J.H. reported no verbal or physical abuse had occurred between the couple and said that she bailed T.G. out of jail right away. The social worker came to J.H.'s apartment later that day and found T.G. at the house with the minors. When J.H. arrived home from work shortly after, J.H. continued to deny there had been an argument the night before and said she believed her neighbors were targeting her. The social worker explained that the Agency was concerned for the minors' safety because of the couple's history of abuse and requested that the parents agree to a safety plan in which T.G. would not stay at the apartment. Instead he would come at 6:20 a.m. to watch the minors while J.H. was at work and leave at 4:30 p.m. when J.H. returned home. The next day, T.G. told the social worker he was staying with a friend and would abide by the temporary safety plan.

On December 21, 2018, the Agency filed a petition on behalf of each minor under section 300, subdivision (b)(1) alleging they were at "substantial risk of exposure to

violent confrontations between the mother and father involving the use of physical force in that in September 2017 [T.G.] physically abused the mother . . ." and detailing the allegations of additional recent abuse. At the detention hearing on December 24, 2018, J.H. and T.G. contested the jurisdictional allegations, noting that a safety plan had been put into place and the Agency did not assert any violations of that plan before filing the petitions. Both parents also argued that even if the Agency had made a prima facie showing on the allegations of the petition, the minors should be placed in J.H.'s care. The Agency's counsel responded that "this is a family that basically should have known better" and because the minors are too young to communicate, detention out of the parents' care was necessary.

The court rejected the parents' arguments, making prima facie findings on the petitions and ordering the minors detained in foster care with liberal supervised visitation and services for J.H. and T.G. At the initial jurisdictional hearing on January 16, 2019, the court set dates for a settlement conference in February and a contested hearing in March. In its report for the initial hearing, the Agency stated that both parents continued to maintain there had been no domestic violence between them since the initial incident in 2017. Both were willing, however, to participate in services and do whatever the Agency required to regain custody of the minors. The Agency also reported that Reichek was concerned for the minors and suspected T.G. was abusing J.H.

In subsequent reports for the contested hearing, the Agency stated that both parents were visiting the minors regularly and actively participating in services, including domestic violence groups and parenting courses. Both were also scheduled for

psychological examinations. For the contested hearing, the Agency opined that juvenile court intervention was necessary because there was a substantial risk the minors would continue to be exposed to domestic violence. The Agency also noted that J.H. and T.G. had violated the protective order restraining contact between them and that they had been dishonest about their relationship and T.G.'s paternity of R.G., which by that time had been established. The Agency stated that J.H. and T.G. "have a chronic and pervasive pattern of domestic violence" that placed the minors' "physical safety in jeopardy" and that because of the parents' dishonesty it was "very difficult to develop safety [plans] with the parents."

At the contested hearing, the court admitted all of the Agency's reports into evidence. No party presented any witness testimony. The Agency's counsel noted that although there was no "smoking gun of a domestic incident since th[e prior] case closed in July 2018," there was "significant corroborating evidence that there has been ongoing domestic violence in this family." As evidence of ongoing abuse, Agency counsel pointed to the neighbors' statements, J.H.'s coworker's observation of an alleged black eye and the bruise on J.H.'s arm, Reichel's ongoing concern for the minors, police reports indicating law enforcement had been called to the home in February and April 2018, and the police contact on December 18, 2018 that precipitated the present dependency. Agency counsel again noted the minors' young ages and inability to communicate as evidence that out-of-home placement was required to prevent the minors from being exposed to additional violence. Agency counsel also opposed unsupervised visitation. Minors' counsel joined the Agency's arguments.



Counsel for T.G. and J.H. both argued there was insufficient evidence to support true findings on the petitions and that the Agency had pointed only to circumstantial evidence that additional domestic violence had occurred since the prior case was closed. Both counsel requested dismissal of the petitions. The parents' counsel also argued that if true findings were made, the court should modify the proposed case plan so that the parents were not required to repeat services they had completed in the past. J.H.'s counsel asserted that if the court sustained the petition, the minors should be placed with J.H. since there was no evidence the parents were violating the safety plan or that they were having any contact outside of their transfer of care of the minors.

At the conclusion of the hearing, the court took jurisdiction over the minors, finding by clear and convincing evidence that the allegations in the petitions were true. The court noted that "circumstantial evidence strongly suggests that [J.H. and T.G.] pulled one over on the Agency and the court in that they were doing things behind their back, and [that conduct] didn't allow the court or the Agency to evaluate the case honestly." The court did not believe the bruise on J.H.'s arm was caused by R.G. and found that the past incidents of domestic violence were evidence of recent abuse. The court also concluded leaving the minors in J.H.'s care would place them at substantial risk, and there was no reasonable means to protect them without removal. Finally, the court found the Agency had made reasonable efforts to prevent the need for removal. The court ordered the minors placed in foster care, gave the Agency discretion to allow unsupervised and overnight visits with notice to minors' counsel, and discretion to allow

a 60-day visit with the concurrence of minors' counsel. J.H. timely appealed the court's findings and orders.

## DISCUSSION

As noted, J.H. challenges both the jurisdictional and dispositional findings, asserting there was no sufficient evidence of current domestic abuse or risk of harm to the minors to support those rulings.

### I

In reviewing the sufficiency of the evidence on appeal, we consider the entire record to determine whether substantial evidence supports the juvenile court's findings. Evidence is "substantial" if it is reasonable, credible, and of solid value. (*In re S.A.* (2010) 182 Cal.App.4th 1128, 1140.) We do not pass on the credibility of witnesses, resolve conflicts in the evidence or weigh the evidence. Instead, we draw all reasonable inferences in support of the findings, view the record favorably to the juvenile court's order, and affirm the order even if other evidence supports a contrary finding. (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 (*Casey D.*)). The appellant has the burden of showing there is no evidence of a sufficiently substantial nature to support the findings or order. (*In re L.Y.L.* (2002) 101 Cal.App.4th 942, 947.)

Juvenile dependency proceedings are intended to protect children who are currently being abused or neglected, "and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm." (§ 300.2.) "The court need not wait until a child is seriously abused or injured to assume jurisdiction and take the steps necessary to protect the child." (*In re R.V.* (2012) 208 Cal.App.4th 837, 843; *In*

*re Heather A.* (1996) 52 Cal.App.4th 183, 194-196 (*Heather A.*.) The focus of section 300 is on averting harm to the child. (*In re I.J.* (2013) 56 Cal.4th 766, 773.)

Although "the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm" (*In re Rocco M.* (1991) 1 Cal.App.4th 814, 824, italics omitted), the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1135 (*Diamond H.*); *In re Troy D.* (1989) 215 Cal.App.3d 889, 899-900.) A parent's past conduct is a good predictor of future behavior. (*In re Petra B.* (1989) 216 Cal.App.3d 1163, 1169-1170 (*Petra B.*.) "Facts supporting allegations that a child is one described by section 300 are cumulative." (*In re Hadley B.* (2007) 148 Cal.App.4th 1041, 1050 (*Hadley B.*.) Thus, the court "must consider all the circumstances affecting the child, wherever they occur." (*Id.* at p. 1048.)

## II

Section 300, subdivision (b)(1) provides a basis for juvenile court jurisdiction if the child has suffered, or there is a substantial risk the child will suffer, serious physical harm or illness as a result of the parent's failure to adequately supervise or protect the child or provide adequate medical treatment. As discussed, the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*Heather A.*, *supra*, 52 Cal.App.4th at pp. 194-196.)

Exposing children to recurring domestic violence may be sufficient to establish jurisdiction under section 300, subdivision (b)(1). (See *Heather A.*, *supra*, 52 Cal.App.4th at pp. 193-194 [evidence of continuing violence between father and

stepmother, where at least one incident occurred in presence of minors, was sufficient for jurisdictional finding].) " 'Both common sense and expert opinion indicate spousal abuse is detrimental to children.' " (*In re E.B.* (2010) 184 Cal.App.4th 568, 576.) Domestic violence impacts children even if they are not the ones being physically abused, "because they see and hear the violence and the screaming." (*Heather A.*, at p. 192; accord, *In re S.O.* (2002) 103 Cal.App.4th 453, 460-461.)

Here, the evidence before the juvenile court supports its findings that the minors were described by section 300, subdivision (b)(1). J.H. argues that the prior dependency case, which was closed with the Agency commending her efforts to reunify with A.G., should not have been taken into consideration for purposes of the jurisdictional findings in this case. The law is clear, however, that the violence between J.H. and T.G. in 2017 was properly considered by the court to assess whether the minors were at risk of harm at the time of the hearing in this case. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133 (*T.V.*) ["Although 'the question under section 300 is whether circumstances at the time of the hearing subject the minor to the defined risk of harm' [citation], the court may nevertheless consider past events when determining whether a child presently needs the juvenile court's protection."]; *Petra B.*, *supra*, 216 Cal.App.3d at p. 1169 ["In determining whether the child is in present need of the juvenile court's protection, the court may consider past events."]; *Hadley B.*, *supra*, 148 Cal.App.4th at p. 1048 [the juvenile court "must consider all the circumstances affecting the child, wherever they occur."].)

J.H. relies on *In re James R.* (2009) 176 Cal.App.4th 129 (*James R.*) to support her contention that all of the evidence of risk to the minors was speculative. In *James R.*, a dependency proceeding was initiated based on the mother's hospitalization after consuming alcohol and prescription ibuprofen while caring for her three children, ages four, three, and one. (*Id.* at pp. 131-132.) Prior to the mother's hospitalization, there had been no instances of behavior on the part of the parents that had placed the minors at risk. (*Id.* at pp. 133, 136.) The evidence showed the parents had never "abused or neglected the minors in the past." (*Id.* at p. 136.) As a result, the court held that any causal link between the mother's hospitalization or mental illness, and future harm to the minors was speculative and insufficient to support the jurisdictional finding by the juvenile court. (*Ibid.*)

Unlike the parents in *James R.*, here J.H. acknowledges that T.G.'s violent acts in the past placed A.G. and R.G. at risk. Also, unlike the one episode of dangerous conduct at issue in *James R.*, the prior violence here was coupled with (1) J.H.'s and T.G.'s dishonesty about their ongoing relationship, and (2) circumstantial evidence of abuse occurring in the year leading up to the present case, including three reports to the police of suspected domestic violence and J.H.'s injuries in April and September. Further, despite the existence of a criminal protective order precluding J.H. and T.G. from contact with each other outside the transfer of care of the minors, T.G. had moved in with J.H.<sup>3</sup>

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<sup>3</sup> A.G. and R.G. are too young to protect themselves from any violence in the home or to report violence if it occurs.

Taken as a whole, this evidence supports a reasonable inference that A.G. and R.G. were at risk of serious physical harm if they remained in J.H.'s care. (*T.V.*, *supra*, 217 Cal.App.4th at p. 135.)

J.H. also argues that it was improper for the juvenile court to rely on the statements of her coworkers and neighbors who suspected abuse without direct evidence of abuse. She points to no legal authority, however, to support this contention. The credibility determinations made by the court to place weight on the statements of the neighbors and coworkers, and to reject J.H.'s and T.G.'s denials, are not subject to second guessing by this court.<sup>4</sup> (*Casey D.*, *supra*, 70 Cal.App.4th at pp. 52-53 ["It is the trial court's role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. We have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence."].)

### III

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<sup>4</sup> J.H. states that two neighbors contradicted the allegations of abuse. However, one of those neighbors did not directly contradict the allegations. Rather, she told the Agency's social worker she had not observed fighting between the parents, but believed T.G. had been living with J.H. and the minors throughout 2018, in violation of the protective order. She also reported hearing a "weird yell" from the apartment around the time of the December 18, 2018 incident.

Before the court may order a child physically removed from his or her parent's custody, it must find, by clear and convincing evidence, the child would be at substantial risk of harm if returned home and that there are no reasonable means by which the child can be protected without removal. (§ 361, subd. (c)(1); *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654.) The jurisdictional findings are prima facie evidence the minor cannot safely remain in the home. (§ 361, subd. (c)(1); *In re Cole C.* (2009) 174 Cal.App.4th 900, 917.) The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. Rather, as discussed, the focus of the statute is on averting harm to the child. (*Diamond H.*, *supra*, 82 Cal.App.4th at p. 1136.) We review the court's dispositional findings for substantial evidence. (*In re Lana S.* (2012) 207 Cal.App.4th 94, 105; *In re N.M.* (2011) 197 Cal.App.4th 159, 170.)

With respect to the juvenile court's dispositional order, J.H. repeats the arguments she makes concerning the court's jurisdiction. Despite substantial evidence before the trial court to the contrary, she argues that she was complying with the protective order that was in place at the time the minors were taken into protective custody. J.H. also asserts that she "showed her honesty and growth by acknowledging the past domestic violence with Father which had led to [A.G.]'s initial dependency."

However, J.H. deceived the Agency about her relationship throughout that prior dependency, and later violated the protective order that was in place and that was a critical safety precaution supporting the termination of that proceeding. We commend J.H. in her continued efforts to reunify with the minors and are optimistic that this proceeding will end in reunification. However, the evidence before the court concerning

alleged recent abuse in the minors' home and J.H.'s past misrepresentations about her relationship with T.G. supports the court's finding that placement of the minors with J.H. would place them at risk of harm. The Agency and the court had good reason to distrust J.H.'s representations that she and T.G. would abide by the criminal protective order that remains in place. Further, although there were no direct witnesses to recent abuse, the evidence before the court supported an inference that additional abuse had occurred in the apartment in the minors' presence. In sum, J.H. has failed to show insufficient evidence supports the court's dispositional order maintaining placement outside her care.

Relying on section 361, subdivision (c)(1), J.H. also argues that removal was not necessary because the court could have ordered the minors placed in her care under "an acceptable plan of protection that the court believes will be followed," and which includes "a noncontact order." As discussed, however, the juvenile court had good reason to *not believe* such a plan would be effective in this case. Contrary to J.H.'s repeated assertion, there was substantial evidence before the court that she and T.G. continued their relationship but represented to the court and the Agency that they were abiding by the criminal protective order.

The dispositional order provided the Agency, with consent from minors' counsel, the ability to place the minors in J.H.'s care for a 60-day visit. This court is hopeful that J.H. and T.G. will continue on their path to healthy parenting, and that the Agency will exercise its discretion to place A.G. and R.G. back in J.H.'s care once it is safe to do so.



DISPOSITION

The judgment and dispositional order are affirmed.

IRION, J.

WE CONCUR:

HALLER, Acting P. J.

DATO, J.